IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5999 OF 2006

State of Maharashtra & Ors..... ....Petitioners.
V/s
Sumanbai Sampatrao Kumbade... ....Respondent.

Office Notes, Office Memoranda of Coram, appearances Court's orders or directions and Registrar' orders.	Court's or Judge's Orders

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Mr.S.K.Chincholikar, AGP. for the petitioners.

Mr.M.S.Karnik, Adv. For the respondent.

CORAM: A.P. DESHPANDE, J.
27.6.2007

PC:

The respondent was appointed as labourer in the Horticulture department of the petitioner. The nature of work available for the labourers was in relation to grafting of plants, watering the same, loading thereof, for being taken to sale. The respondent is in continuous service of the petitioner since the year 1982. In the year 1990 the petitioner and others similarly situated filed a complaint before the Industrial Court under items 6 and 9 of Schedule

IV of the MRTU & PULP Act contending that by denying permanency to the respondent the petitioner has indulged in unfair labour practice. The petitioner raised only one ground before the Industrial Court which has been pressed in service in this petition and the same is to the effect that the petitioner is not an industry. The Industrial Court has held that having regard to the nature of horticultural activity it cannot be held that the said activity is sovereign function of the State. Having regard to the triple test laid down in the case of ***Bangalore Water Supply Sewerage Board*** v/s ***A. Rajappa,*** AIR 1978 SC 548, the Industrial Court has held that the petitioner is an industry. The learned Additional Government Pleader has placed reliance on a judgment of the Supreme Court reported in the case of ***Secretary, State of Karnataka & Ors.*** V/s ***Umadevi & Ors.***, 2006 II CLR 261 and submitted that the persons who are not appointed in adherence to the procedure prescribed for appointment cannot be granted permanency as the same would amount to granting relief to those who have secured back door entry.

Learned counsel for the respondent has rightly pointed out that the said judgment has no application to the facts of the present case in as much as the petitioner has not raised any contention before the Industrial Court that the appointment of the respondent was not in adherence to the procedure prescribed for appointment. In this view of the matter the submission made by the learned additional Government Pleader cannot be accepted. Perused the order passed by the Industrial Court. Same does not call for any interference at the hands of this Court. Hence writ petition is summarily dismissed.

27.6.07.